INDEX

	Page No.
Opinion below	1
Jurisdiction	1
Questions presented	1
Regulation involved	2
Statement	3
Argument	6
Conclusion	12

CITATIONS

Cases:	
Blockburger v. *United States*, 284 U. S. 299	11
Hagner v. *United States*, 285 U. S. 427	10
Sealfon v. *United States*, 332 U. S. 575	11
Sutton v. *United States*, 157 F. 2d 661	9
Williams v. *United States*, 164 F. 2d 302	4
Statute:	
Second War Powers Act, 1942, as amended, 56 Stat, 177; 58 Stat. 827; 60 Stat. 868; 50 U. S. C. App. 633	7
Miscellaneous:	
General Ration Order 8, as amended, of the Office of Price Administration:	
Sec. 2.6 (8 F. R. 9626, 9 F. R. 2746)	2, 8
Sec. 2.9 (8 F. R. 3783)	10
Third Revised Ration Order No. 3, Sec. 22.10 (7 F. R. 2966; 11 F. R. 134, 164; 12 F. R. 1926)	7
Rule 7 (c), F. R. Crim. P	7, 8
Rule 52 (a), F. R. Crim. P	10
Form 5, Appendix of Forms, F. R. Crim. P	8

In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 428

J. T. WILLIAMS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (R. 282–287) is reported at 170 F. 2d 319.

JURISDICTION

The judgment of the Court of Appeals was entered October 22, 1948 (R. 288). The petition for a writ of certiorari was filed November 18, 1948. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1). See also Rules 37 (b) (2) and 45 (a), F. R. Crim. P.

QUESTIONS PRESENTED

1. Whether an information which charged in the language of an O. P. A. regulation that at a

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stated time and place petitioner had possessed, used and transferred a specified number of sugar ration stamps which had not been acquired by him in accordance with a ration order, without stating affirmatively how they had been acquired, sufficiently informed petitioner of the nature and cause of the offense charged.

2. Whether, under the principle of double jeopardy or of *res judicata*, petitioner's acquittal of an alleged violation of one section of an O. P. A. ration order by receiving a specified amount of sugar in exchange for ration stamps which he knew he had not acquired under a valid ration order barred his trial on charges that on subsequent dates he violated another section of the order by possessing, using and transferring specified numbers of sugar ration stamps which he had not acquired in accordance with a ration order.

REGULATION INVOLVED

Section 2.6, General Ration Order 8, as amended, of the Office of Price Administration (8 F. R. 9626, 9 F. R. 2746):

> *Acquisition, use, transfer or possession of ration document.* No person shall acquire, use, permit the use of, possess or control a ration document except the person, or the agent of the person, to whom such ration document was issued, or by whom it was acquired in accordance with a ration order or except as otherwise provided by a ration order. No person shall use or trans-

fer a token or other ration document except in a way and for a purpose permitted by a ration order.

STATEMENT

Petitioner was charged in an 18-count information with various violations of sugar rationing regulations during the period from January 1946 to May 1947. Count 1 (with which counts 2 and 3 were identical, except for dates and numbers of ration stamps) was as follows (R. 2):

> Section 2.6 General Ration Order 8, as Amended, of the Office of Price Administration, 8 FR 9626.
>
> * * * * *
>
> On or about the 14th day of April, 1947, at Cordele, Georgia, in the Americus Division of the Middle District of Georgia, the defendant John T. Williams, alias J. T. Williams, alias Buck Williams, knowingly, willfully, and unlawfully did then and there acquire, use, permit the use of, transfer, possess, and control divers and sundry ration documents, to-wit: about 911 sugar ration stamps, which aforesaid ration documents had not been issued to and acquired by the said defendant John T. Williams, in accordance with a ration order.

He was originally found guilty on counts 1, 2 and 3 (the only counts presently involved) and seven other counts, and acquitted on eight counts. Upon appeal, the convictions were reversed and the case remanded for further proceedings be-

cause of error in the trial court's denial of petitioner's motion for a bill of particulars. *Williams* v. *United States,* 164 F. 2d 302 (C. C. A. 5).

Thereafter, in respect of counts 1, 2 and 3, petitioner moved for a bill of particulars requiring the Government to show how he had acquired the stamps referred to in those counts and how he transferred them; to state the value of the stamps in terms of sugar; and to furnish a copy of the ration order which was allegedly violated (R. 16–17). In response, the Government set forth the applicable rationing regulations; disclaimed knowledge as to how petitioner had acquired the stamps; stated that petitioner had transferred the specified number of ration stamps, each of which represented five pounds of sugar, to one Ralph C. Mitchell in order to acquire a quantity of sugar from him; and furnished a copy of the record of the first trial with the explanation that it contained evidence which would be adduced against petitioner (R. 21–34).

On the morning of the second trial (R. 41), petitioner moved to dismiss the information for failure to charge a crime and for insufficiency of the bill of particulars (R. 45–47). The motion was denied on the grounds that it was untimely and that the bill of particulars adequately complied with petitioner's request (R. 57).

Pleas of former jeopardy and *res judicata* were filed, in which it was asserted that petitioner's

acquittal on count 9 at the first trial barred his trial on counts 1, 2 and 3.[1] Count 9 had charged as follows (R. 6–7):

> During the period from about January 15, 1946, to and including the month of March, 1947, at Cordele, Georgia, in the Americus Division of the Middle District of Georgia, the defendant John T. Williams, alias J. T. Williams, alias Buck Williams, did then and there knowingly, willfully and unlawfully receive sugar a rationed commodity, in the amount of about 1,000,000 pounds, in exchange for various and sundry ration documents, namely sugar ration stamps, which he, the aforesaid defendant, then and there knew and had reason to believe were not acquired by him in accordance with the provisions of a ration order.

The pleas in bar were overruled (R. 101).

The evidence, stated briefly, showed that petitioner, as the owner of a soft-drink bottling plant, and hence, as an industrial user of sugar, maintained a sugar ration account in a bank (R. 125, 196). Rationing evidences were deposited in this account, and checks were drawn against it in exchange for sugar. As petitioner admitted to O. P. A. agents, he carried on no business in

[1] The plea of *res judicata* also alleged that petitioner's acquittal on count 13 barred a retrial of count 10. That contention became irrelevant on the elimination of count 10. *Infra*, fn. 2, p. 6.

which sugar ration *stamps* could lawfully be used. Petitioner denied to the agents that he had ever possessed any sugar ration stamps except those of his wife for family use and stated that, in his purchases of sugar, he had used ration checks as distinguished from stamps (R. 140, 176, 177). In fact, however, he had bought large quantities of sugar from Ralph C. Mitchell and, in order to obtain the sugar, had transferred on April 14, 1947, gummed sheets containing 911 sugar stamps, representing 4,555 pounds of sugar (count 1). On other occasions he transferred 1,730 (count 2) and 800 stamps (count 3), each representing five pounds of sugar (R. 120, 203-206).

Petitioner was found guilty on counts 1, 2 and 3 and acquitted on the remaining five counts.[1] His motion in arrest of judgment was denied (R. 268-269), and he was sentenced to imprisonment for concurrent terms of twelve months on each of the counts (R. 15–16). The convictions were affirmed by the Court of Appeals for the Fifth Circuit (R. 288).

ARGUMENT

1. Petitioner contends, in substance (Pet. 12–13, 16–17), that the information failed to apprise him of the nature and cause of the offenses with which he was charged and, therefore, was insuf-

[1] Counts 10 and 18 were eliminated at petitioner's request at the beginning of the second trial because he had paid the fines of $5,000 which had been imposed on those counts (R. 102–108).

ficient under the Sixth Amendment. It is fundamental, of course, that the essential elements of a crime must be charged with sufficient clarity and definiteness to enable the accused to prepare his defense and to plead a judgment in bar to a subsequent prosecution for the same offense. We think that counts 1, 2 and 3, upon which petitioner was convicted met this constitutional requirement.

Several commodities, including sugar, were rationed during the recent emergency under regulations issued by the O. P. A. pursuant to the Second War Powers Act, 1942, as amended.[3] In Ration Order No. 3 the O. P. A. prescribed the manner and means by which sugar could be acquired by consumers, industrial users and others.[4]

[3] 56 Stat. 177; 58 Stat. 827; 60 Stat. 868; 50 U. S. C. App. 633.

[4] 7 F. R. 2966. This order was frequently amended and during the periods stated in the information was known as Third Revised Ration Order No. 3. 11 F. R. 134.

Petitioner's contention (Pet. 14) that this order superseded General Ration Order No. 8 is erroneous. The two orders were co-existent and complemented each other. See, e. g., 12 F. R. 1926. Even if General Ration Order No. 8 had been superseded, petitioner would not be helped since Section 22.10, Third Revised Ration Order No. 3 (11 F. R. 134, 164; R. 27), contained a comparable prohibition against possession and control of ration stamps in violation of the order, and the Second War Powers Act (supra, fn. 3) made it a misdemeanor to violate any regulation or order issued thereunder. Failure to cite the statute under which an indictment is drawn is immaterial in the absence of prejudice to the accused. Rule 7 (c), F. R. Crim. P.

In addition to specific orders which related to a particular rationed commodity or group of commodities, the O. P. A. issued orders which applied generally to the rationing program. Thus, section 2.6 of General Ration Order No. 8, as amended,[5] *supra,* pp. 2–3, provided that, unless otherwise allowed by a ration order, no one except the person to whom they were issued and his agent should acquire, use, permit the use of, possess, control or transfer ration documents.

The counts upon which petitioner was convicted were laid under section 2.6 and charged that at stated times and places he acquired, used and transferred sugar ration stamps which had not been issued to and acquired by him in accordance with a ration order. All the constituent elements of the offense as defined in section 2.6 were thus contained in each of these counts as allegations of ultimate facts. Nothing more is required of an indictment or information. Rule 7 (c), F. R. Crim. P.; see, also, Form 5, Appendix of Forms, F. R. Crim. P. Petitioner's underlying challenge, as we understand it, is that the allegation that the ration stamps had not been issued to and acquired by him "in accordance with a ration order" rendered each count defective because of its failure to state affirmatively the manner in which the documents had been acquired by petitioner. But, as the Court of Ap-

[5] 8 F. R. 9626, 9 F. R. 2746.

peals observed (R. 283), "the information alleged in each of these counts that the stamps had not been issued to and acquired by him in accordance with a ration order, and that was all that had to be proved to sustain the charge that his possession and use of them was unlawful." It was immaterial how petitioner had acquired the stamps, so long as the Government charged and proved that the acquisition was not in accordance with any ration order.[6]

Specificity of detail fell within the scope of the Government's bill of particulars, which set forth the pertinent ration orders and the evidence which the Government proposed to adduce. Certainly, the information in petitioner's possession when the trial commenced refutes any claim of surprise. He was adequately advised of the circumstances under which sugar stamps could be acquired in conformity with the sugar rationing

[6] *Sutton* v. *United States*, 157 F. 2d 661 (C. A. 5), upon which petitioner relies (Pet. 13) as in conflict with the decision below (the same court decided both cases), is not to the contrary. The indictment in that case charged merely the *possession* of rationed sugar "in violation of Second Revised Ration Order No. 3 and General Ration Order No. 8, as amended." Since mere possession of sugar was not an offense unless the sugar had been acquired in a manner not permitted by Revised Ration Order No. 3, the court held that the indictment did not charge a crime. Here, on the other hand, counts 1, 2 and 3 specifically cited section 2.6 of General Ration Order No. 8, and alleged as a fact that the sugar stamps which petitioner possessed, used and transferred had not been issued to and acquired by him in accordance with a ration order.

program. Even upon the assumption that the information might have been made more specific, no prejudice is shown, and in the present posture of the case imperfections should be disregarded. Rule 52 (a), F. R. Crim. P.; *Hagner* v. *United States,* 285 U. S. 427.[1]

2. The pleas of former jeopardy and *res judicata* were based upon petitioner's contention that the offenses charged in counts 1, 2 and 3 were covered by count 9, on which a verdict of acquittal had been directed at the first trial. Count 9 charged that between January 15, 1946, and March 31, 1947, petitioner violated section 2.9 of General Ration Order No. 8, as amended (R. 22), by receiving about 1,000,000 pounds of sugar in exchange for ration stamps which he knew or had reason to believe were not acquired by him in accordance with a ration order (R. 7). Counts 1, 2 and 3 charged that on subsequent dates, specifically on or about April 7 and 14, 1947, and May 5, 1947, petitioner violated a different section of General Ration Order No. 8, as amended, i. e., section 2.6, by possessing, using and transferring a stated number of sugar ration stamps, which

[1] The motion to dismiss the information which was made immediately before the commencement of the second trial was held untimely by the trial judge (R. 57) and, in the light of the history of the case, was tantamount to the motion for arrest of judgment which was later filed (R. 268–269). Under the circumstances, the rule of "harmless error" is particularly apposite.

had not been issued to and acquired by him in accordance with a ration order. Apart from the difference in dates, which alone is a crucial distinction, it is clear that distinct offenses were charged, each requiring different proof from the other. Consequently, the plea of former jeopardy was properly overruled. See, e. g., *Blockburger* v. *United States,* 284 U. S. 299.

The plea of *res judicata,* or collateral estoppel, was likewise without merit. *Sealfon* v. *United States,* 332 U. S. 575, cited by petitioner (Pet. 12–13) as contrary to the decision below, does not controvert the principle that an acquittal operates to bar re-litigation only of those matters in issue which were actually litigated and determined. Here, the directed verdict of acquittal on count 9 determined merely that the Government had failed to establish that during a certain period (antecedent to the dates referred to in counts 1, 2 and 3) petitioner received a million pounds of sugar in exchange for illegally-acquired stamps. This was not a determination that at no time had petitioner possessed and transferred sugar ration stamps which had not been issued to or acquired by him in accordance with a ration order. Apparently the judge who directed the verdict of acquittal on count 9 did not think so for he overruled the plea in bar on counts 1, 2 and 3. His action was obviously justified by the inconclusiveness of the acquittal upon the issues in the remaining counts.

CONCLUSION

The judgment below is clearly correct and no conflict of decisions is involved. Accordingly, we respectfully submit that the petition for a writ of certiorari should be denied.

PHILIP B. PERLMAN,
Solicitor General.
ALEXANDER M. CAMPBELL,
Assistant Attorney General.
ROBERT S. ERDAHL,
HAROLD D. COHEN,
Attorneys.

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